

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DON F.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. C22-619-MLP

ORDER

**I. INTRODUCTION**

Plaintiff seeks review of the denial of his application for Supplemental Security Income. Plaintiff contends the administrative law judge (“ALJ”) erred in assessing the medical opinion evidence. (Dkt. # 13 at 2.) As discussed below, the Court AFFIRMS the Commissioner’s final decision and DISMISSES the case with prejudice.

**II. BACKGROUND**

Plaintiff was born in 1975, has two years of college education, and has worked as a poultry factory processor. AR at 254. Plaintiff was last gainfully employed in 2017. *Id.*

1 In September 2019, Plaintiff applied for benefits, alleging disability as of January 1,  
 2 2017.<sup>1</sup> AR at 218-24. Plaintiff's application was denied initially and on reconsideration, and  
 3 Plaintiff requested a hearing. *Id.* at 113-21, 123-39. After the ALJ conducted a hearing in  
 4 February 2021 (*id.* at 32-54), the ALJ issued a decision finding Plaintiff not disabled. *Id.* at  
 5 15-26.

6 As the Appeals Council denied Plaintiff's request for review, the ALJ's decision is the  
 7 Commissioner's final decision. AR at 1-6. Plaintiff appealed the final decision of the  
 8 Commissioner to this Court. (Dkt. # 4.)

### 9 III. LEGAL STANDARDS

10 Under 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of social  
 11 security benefits when the ALJ's findings are based on legal error or not supported by substantial  
 12 evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th Cir. 2005). As a  
 13 general principle, an ALJ's error may be deemed harmless where it is "inconsequential to the  
 14 ultimate nondisability determination." *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)  
 15 (cited sources omitted). The Court looks to "the record as a whole to determine whether the error  
 16 alters the outcome of the case." *Id.*

17 "Substantial evidence" is more than a scintilla, less than a preponderance, and is such  
 18 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.  
 19 *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th  
 20 Cir. 1989). The ALJ is responsible for determining credibility, resolving conflicts in medical  
 21 testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d  
 22 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a whole, it may

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<sup>1</sup> The record also references two prior applications that were denied, as well as evidence considered in connection with a prior application. *See, e.g.*, AR at 93-104, 248-49, 330-53.

1 neither reweigh the evidence nor substitute its judgment for that of the Commissioner. *Thomas v.*  
2 *Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is susceptible to more than one  
3 rational interpretation, it is the Commissioner’s conclusion that must be upheld. *Id.*

#### 4 IV. DISCUSSION

5 Plaintiff challenges the ALJ’s assessment of multiple medical opinions, each of which the  
6 Court will address in turn.

##### 7 A. Legal Standards

8 Under regulations applicable to this case, the ALJ is required to articulate the  
9 persuasiveness of each medical opinion, specifically with respect to whether the opinions are  
10 supported and consistent with the record. 20 C.F.R. § 416.920c(a)-(c). An ALJ’s consistency and  
11 supportability findings must be supported by substantial evidence. *See Woods v. Kijakazi*, 32  
12 F.4th 785, 792 (9th Cir. 2022).

##### 13 B. Treating Physician Mohsin Ali, M.D.

14 Dr. Ali wrote a letter in May 2018 listing Plaintiff’s diagnoses and indicating that he  
15 could not work full-time, but could “probably” work part-time with support. AR at 361. The ALJ  
16 did not assess the persuasiveness of this letter, as Plaintiff contends he was required to do by  
17 regulation. (Dkt. # 13 at 3-5.)

18 The regulations require ALJs to assess the persuasiveness of each medical opinion in the  
19 record, but Dr. Ali’s letter does not constitute a medical opinion under the regulatory definition.  
20 *See* 20 C.F.R. § 416.913(a)(2)(i) (defining a medical opinion as “a statement from a medical  
21 source about what [a claimant] can still do despite [his or her] impairment(s) and whether [the  
22 claimant has] one or more impairment-related limitations or restrictions” in the functional areas  
23 defined by regulation). Dr. Ali’s letter does not describe any particular workplace functional

1 limitations, nor does it describe what Plaintiff can still do despite his impairments. AR at 361.  
2 Accordingly, Dr. Ali's letter does not constitute a medical opinion and the ALJ did not err in  
3 failing to assess its persuasiveness.

4 **C. Examining Psychologist Tasmyn Bowes, Psy.D.**

5 Dr. Bowes examined Plaintiff in September 2019 and completed a DSHS form opinion  
6 indicating that Plaintiff had several moderate mental limitations. AR at 362-67. The State agency  
7 consultants reviewed Dr. Bowes's opinion and adopted it. *See id.* at 64, 81. The ALJ found the  
8 State agency opinions persuasive (*id.* at 24), but did not explicitly assess the persuasiveness of  
9 Dr. Bowes's opinion.

10 The Commissioner concedes that the ALJ erred in failing to explicitly assess Dr. Bowes's  
11 opinion, but contends that the error is harmless because the ALJ's RFC assessment is  
12 nonetheless consistent with Dr. Bowes's opinion. (Dkt. # 14 at 6-7.) The Court agrees, because  
13 the State agency consultants adopted Dr. Bowes's opinion and accounted for the limitations she  
14 assessed, and the ALJ's RFC assessment is consistent with the limitations described in the State  
15 agency opinions. *See* AR at 19-20, 64, 67-69, 81, 84-86. Thus, because the ALJ's RFC  
16 assessment is consistent with Dr. Bowes's opinion, his error in failing to explicitly assess Dr.  
17 Bowes's opinion did not prejudice Plaintiff.

18 Plaintiff contends that Dr. Bowes's opinion describes limitations that would be disabling,  
19 in light of the vocational expert's ("VE") testimony that an employee that is off-task more than  
20 5% of a workday or absent more than once per month could not sustain a job. (Dkt. # 13 at 5  
21 (citing AR at 52).) But Dr. Bowes did not opine that Plaintiff would have either of those  
22 limitations, nor did she indicate that Plaintiff would cause conflicts with his co-workers, which  
23 the VE testified would not be tolerated in the workplace. AR at 53. Because Plaintiff has not

1 identified any particular functional limitation identified by Dr. Bowes that is not accounted for in  
2 the ALJ's RFC assessment, Plaintiff has not met his burden to show harmful legal error in the  
3 ALJ's decision with respect to this opinion.

4 **D. Treating Counselor Suzanne Saltzer, LSWAIC, MHP**

5 Ms. Saltzer completed forms and wrote a letter in February 2021 indicating that Plaintiff  
6 had disabling mental limitations. AR at 808-13. The ALJ agreed with Ms. Saltzer that Plaintiff's  
7 symptoms cause moderate limitations, but the ALJ found Ms. Saltzer's opinions unpersuasive to  
8 the extent that she described more severe limitations because such limitations were inconsistent  
9 with the longitudinal record as well as "the type and degree of treatment needed[.]" and also  
10 inconsistent with Plaintiff's ability to take public transportation, live independently, and work  
11 part-time. *Id.* at 24.

12 Most of the ALJ's consistency findings are supported by substantial evidence in the  
13 record.<sup>2</sup> The longitudinal record does contain some abnormal mental findings, particularly as to  
14 Plaintiff's thought content and thought form, along with some normal findings. *See, e.g.*, AR at  
15 513-14 (many normal findings, but abnormal as to thought content and form), 517-18 (same),  
16 587-88 (same), 591-92 (same), 595-96 (same), 599-600 (same), 777 (normal mental findings).  
17 Also, as noted *supra*, Dr. Bowes referenced normal and abnormal findings, and concluded that  
18 Plaintiff's limitations were moderate. *See id.* at 365-67.

19 Moreover, as emphasized by the ALJ (AR at 24), Plaintiff reported that he was able to  
20 use public transportation, and at the time of the administrative hearing he had recently moved  
21 into an apartment of his own. *See id.* at 37-40, 281-83. Plaintiff reported an ability to perform  
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23 <sup>2</sup> The Court agrees with Plaintiff (dkt. # 13 at 8) that the ALJ erred in finding Ms. Saltzer's conclusions to be inconsistent with Plaintiff's course of treatment, but this error is harmless because the ALJ provided the valid reasoning described in the remainder of this paragraph, *infra*.

1 temporary day-labor jobs during the adjudicated period, until the COVID-19 pandemic made  
2 such work unavailable. *See id.* at 37-40, 590, 594, 609-10. Such activities are reasonably  
3 inconsistent with the disabling social and concentration deficits described by Ms. Saltzer.

4 Because the ALJ referenced evidence inconsistent with Ms. Saltzer's opinions, the ALJ  
5 reasonably found her opinions less persuasive on this basis.

6 **E. Treating Counselor Jamie Fredrickson, LMFT**

7 Ms. Fredrickson completed a form opinion in November 2019 identifying Plaintiff's  
8 moderate, marked, or extreme limitations as to memory, concentration, social functioning, and  
9 adaptation. AR at 570-73. The ALJ found that the marked and extreme limitations identified by  
10 Ms. Fredrickson were unpersuasive because Plaintiff's mental status examinations showed "no  
11 significant deficits in memory skills and insight." *Id.* at 24.

12 There are indeed many mental status examinations wherein Plaintiff is described to have  
13 intact memory and unimpaired insight. *See, e.g.,* AR at 514, 518, 588, 592, 596, 600; *but see id.*  
14 at 366-67 (intact memory but "limited" insight). Such findings are reasonably inconsistent with  
15 Ms. Fredrickson's conclusion that Plaintiff would be markedly limited in his ability to remember  
16 locations and work-like procedures, and in his ability to set realistic goals or make plans  
17 independently. *See id.* at 572-73. By comparing Ms. Fredrickson's conclusions with the  
18 remainder of the record, and referencing evidence inconsistent with Ms. Fredrickson's  
19 conclusions, the ALJ properly assessed whether her conclusions were consistent with the record.

20 Plaintiff emphasizes that although clinicians assessed some normal findings, they also  
21 observed him to have a "frustrated and depressed" affect, with a constricted range and tangential  
22 thought form. (Dkt. # 13 at 11 (citing AR at 595-96)). But Plaintiff does not explain why those  
23 abnormal findings would necessarily suggest that he is more limited than found by the ALJ.

Moreover, although Plaintiff suggests that the ALJ erred in citing only one mental status examination in the decision to support his interpretation of the record (dkt. # 13 at 11-12), the Court reviews the ALJ's reasoning for the support of substantial evidence in the entire record, and is not limited to reviewing only the portions of the record explicitly cited by the ALJ. *See, e.g., Woods*, 32 F.4th at 788 ("Under the substantial-evidence standard, we look to the existing administrative record and ask whether it contains sufficient evidence to support the agency's factual determinations." (cleaned up)); *Molina*, 674 F.3d at 1110 (providing that a reviewing court may "reverse only if the ALJ's decision was not supported by substantial evidence *in the record as a whole* or if the ALJ applied the wrong legal standard" (emphasis added)).

The record contains substantial evidence inconsistent with Ms. Fredrickson's opinion and the ALJ reasonably found her opinion less persuasive on this basis.

#### **F. State Agency Psychological Consultants**

The ALJ found the opinions of the State agency psychological consultants (AR at 56-88) to be persuasive because their opinions were consistent with the record of Plaintiff's depressed mood and tangential thought form, as well as with Plaintiff's prescribed medication regimen. *Id.* at 24.

Plaintiff raises two challenges to the ALJ's assessment of the State agency opinions. First, Plaintiff contends that the ALJ failed to fully account for the State agency consultants' opinion that he would "do best" with no public contact (AR at 68, 85), because the ALJ limited him to incidental interaction with the general public rather than completely prohibiting public contact. (Dkt. # 13 at 14.)

The Court finds no inconsistency between the social limitations described in the State agency opinions and the ALJ's RFC assessment because a description of Plaintiff's optimal

1 working environment does not equate to an opinion as to the most he can do (*i.e.*, his RFC). *See*  
2 20 C.F.R. § 416.945(a)(1) (RFC “is the most you can still do despite your limitations”). In  
3 assessing a claimant’s RFC, an ALJ may “rationally rely on specific imperatives regarding a  
4 claimant’s limitations, rather than recommendations.” *Rounds v. Comm’r of Soc. Sec. Admin.*,  
5 807 F.3d 996, 1006 (9th Cir. 2015) (citing *Carmickle v. Comm’r of Soc. Sec. Admin.*, 533 F.3d  
6 1155, 1165 (9th Cir. 2008)). Because the State agency consultants recommended that Plaintiff  
7 would “do best” with no public contact, but did not find him incapable of tolerating incidental  
8 interaction, the ALJ’s RFC assessment is not inconsistent with the State agency opinions.  
9 Plaintiff has failed to establish error in this aspect of the ALJ’s decision.

10 Plaintiff goes on to challenge the ALJ’s overall assessment of the State agency opinions,  
11 contending that the ALJ’s reasoning does not clearly explain why the opinions were found  
12 persuasive. (Dkt. # 13 at 13-14.) Plaintiff is mistaken: the ALJ stated that the moderate  
13 limitations listed in the State agency opinions were consistent with various abnormal findings in  
14 Plaintiff’s treatment record as well as his medication regimen, which explains why he credited  
15 the limitations identified by State agency opinions. *See* AR at 24. Plaintiff suggests that the  
16 ALJ’s explanation is deficient because he did not explain why the evidence would not support  
17 additional limitations (dkt. # 13 at 13), but Plaintiff cites no authority requiring such an  
18 explanation and the Court is aware of no such requirement. Plaintiff has not established that the  
19 ALJ erred in finding that the State agency opinions were consistent with the record, and thus has  
20 failed to meet his burden to show harmful legal error in the ALJ’s assessment of the State agency  
21 opinions.  
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For the foregoing reasons, the Commissioner's final decision is **AFFIRMED**, and this case is **DISMISSED** with prejudice.

Mr. Nelson

**MICHELLE L. PETERSON**  
United States Magistrate Judge